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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/757,721	01/10/2001	Ursula Murschall	00/001 MFE	8369

38263 7590 07/26/2006

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CHARLOTTE, NC 28211-2841

EXAMINER

RICKMAN, HOLLY C

ART UNIT	PAPER NUMBER
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1773

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/757,721

Applicant(s)

MURSCHALL ET AL.

Examiner

Holly Rickman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/15/06 has been entered.

Claim Rejections - 35 USC § 112

2. The rejection of claims 1-2 and 5-17 under 35 U.S.C. 112, first paragraph, is withdrawn in view of Applicant's arguments.

Claim Rejections - 35 USC § 102/103

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative under 35 USC 103(a) as being unpatentable over Rashbrook (US 4203888).

Rashbrook discloses a biaxially oriented polyester film formed from polyethylene terephthalate and up to 20 weight percent of an organo-phosphorus flame retardant. The reference fails to explicitly disclose the claimed properties of modulus of elasticity and embrittlement.

It is the examiner's contention that the film taught by Rashbrook would inherently satisfy the property limitations of claims 19-20. The reference teaches a film having the same composition as disclosed and claimed and therefore, would be expected to exhibit the same properties.

It has been held that where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the burden of proof is shifted to applicant to show that prior art products do not necessarily or inherently possess characteristics of claimed products where the rejection is based on inherency under 35 USC §102 or on prima facie obviousness under 35 USC §103, jointly or alternatively. *In re Best, Bolton, and Shaw*, 195 USPQ 430. (CCPA 1977).

Claim Rejections - 35 USC § 103

6. The rejection of claims 18-22 under 35 U.S.C. 103(a) as being unpatentable over Peiffer et al. (U55955181) in view of Oishi et al. (U55936048) and Rogers et al. (U55804626) is withdrawn in view of Applicant's amendments.

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7. Claims 1-2, 5-17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rashbrook US 4203888.

Rashbrook discloses a biaxially oriented polyester film formed from polyethylene terephthalate, up to 20 weight percent of an organo-phosphorus flame retardant, and 0.1 wt% of a hydrolysis stabilizer. The reference teaches that the film can be metalized (i.e. metal layer corresponds to a base layer with polyester film corresponding to the outer layer required by claims 8-12). It would have been well within the purview of one of ordinary skill in the art to incorporate recycled materials (i.e., recycled polyethylene terephthalate or metal for the metalized layer) in the structure disclosed by Rashbrook. The reference fails to disclose a specific range of thickness for the polyester film but instead teaches that the film can be formed into a range of thicknesses.

It would have been obvious and well within the purview of one of ordinary skill in the art at the time of invention to choose a suitable thickness for the polyester film taught by Rashbrook based upon the desired end use of the film. The examiner maintains that the claimed range does not appear to present a patentable distinction over Rashbrook in the absence of evidence of unexpected results associated with the claimed range.

The reference fails to explicitly disclose the claimed properties of flame retardancy as per UL 94 VTM-0, surface gloss, luminous transmittance L, haze, Yellowness Index and requirements for construction material classes B2 and B1 to DIN 4102. It is the examiner's contention that the film taught by Rashbrook would inherently satisfy the listed property limitations. The reference teaches a film having the same composition as disclosed and claimed and therefore, would be expected to exhibit the same properties.

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It has been held that where claimed and prior art products are identical or substantially identical, or are produced by identical or substantially identical processes, the burden of proof is shifted to applicant to show that prior art products do not necessarily or inherently possess characteristics of claimed products where the rejection is based on inherency under 35 USC §102 or on prima facie obviousness under 35 USC §103, jointly or alternatively. *In re Best, Bolton, and Shaw*, 195 USPQ 430. (CCPA 1977).

Response to Arguments

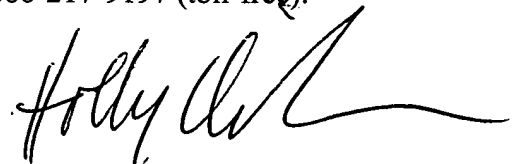
8. Applicant's arguments filed 5/15/06 have been fully considered but they are moot in view of the new grounds of rejection.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Holly Rickman whose telephone number is (571) 272-1514. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571) 272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Holly Rickman", with a long horizontal flourish extending to the right.

Holly Rickman
Primary Examiner
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